

**Congress of the United States**  
**Washington, DC 20510**  
November 22, 2011

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Timothy Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Sebelius, Secretary Geithner, and Secretary Solis:

We write to thank you for your continued commitment to improving access to affordable health care for Americans, and to urge you to promptly and effectively implement critical provisions of the Affordable Care Act that will help consumers shop for the best value in their health care coverage.

For too long, a shameful lack of transparency has allowed insurance companies to hide vital information from consumers instead of competing based on the best value they can offer. When individuals buy cars or computers, they know exactly what they are buying and how much it will cost. Yet, when it comes to making choices about health care coverage, it is often very difficult for consumers to tell what is actually covered and how much they will have to pay, because the details of coverage are deliberately made obscure or shrouded in health insurance legalese. This can result in consumers purchasing a “lemon” health insurance plan – one that they thought would work for them, but in the end, fails to cover their health care needs. Indeed, research has shown that consumers suffer financially and that markets are inefficient when their health insurance policies are difficult to understand.<sup>1</sup> Given that the average cost of an employer-sponsored plan for family coverage now exceeds \$15,000, and that the average individual can expect to spend over \$5,400 on a plan next year<sup>2</sup>, it is imperative that consumers

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<sup>1</sup> Randall D. Cebul, James B. Rebitzer, Lowell J. Taylor and Mark E Votruba. *Unhealthy Insurance Markets: Search Frictions and the Cost and Quality of Health Insurance*, *American Economic Review*, August 2011.

<sup>2</sup> Kaiser Family Foundation Employer Health Benefits 2011 Annual Survey, available at <http://ehbs.kff.org/pdf/2011/8225.pdf>.

be armed with the information they need to make sure they are getting the best possible deal on health insurance.

Recognizing that Congress must hold the insurance industry accountable, we introduced the Informed Consumer Choices in Health Care Act in 2009 to improve the transparency and accountability of insurance products. The bill became the basis for many of the protections in the Affordable Care Act (ACA), including the provision of standardized information to consumers in all private health insurance markets. The ACA also requires insurers to publicly disclose critical market conduct information that will help to ensure they are abiding by the consumer protections in the health reform law. By requiring insurance companies to explain their coverage in ways that consumers and employers can understand when deciding among health insurance options, the ACA dramatically increases the transparency necessary to create functioning health insurance markets and help all Americans receive high-quality, affordable health insurance.

We are therefore writing to urge you to maintain the strongest possible consumer protections while implementing the Summary of Benefits and Coverage, Coverage Examples, and Uniform Glossary required under the ACA. The proposed rule is a tremendous step forward in helping consumers to make informed decisions about health care coverage, and we urge you to reject calls to weaken the proposed rule. Instead, we urge you to adopt a consumer-friendly final rule that remains faithful to the law's intent to provide consumers and employers with accessible, comprehensive information they have long deserved, in a standard uniform format that allows them to become more effective purchasers.

For more than a year, the National Association of Insurance Commissioners (NAIC) convened a multi-stakeholder working group, including health insurance industry representatives, which spent nearly one year developing a proposed Summary of Benefits and Coverage form, Coverage Examples, and glossary. We commend this group for its efforts in helping consumers gain access to comprehensive information about their health insurance options, and urge you not to weaken any of their recommendations.

Specifically, we urge you to strengthen the proposal in the following ways:

***1. Consumers must be able to easily access the Summary of Benefits and Coverage regardless of the source of their coverage.***

All Americans deserve to be confident that they are receiving accurate, comparable information about their health insurance, regardless of the market in which they purchase their coverage. The Affordable Care Act clearly requires that the Summary of Benefits and Coverage (SBC) be made uniformly available by health insurance plans or issuers in all markets, including self-funded employer plans. Thus, we urge you to reject any approach that exempts certain employers from the Summary of Benefits and Coverage requirement or allows them to bury the Summary of Benefits and Coverage within the larger "Summary Plan Description" that self-funded employers already offer – even by placing the Summary of Benefits and Coverage within the first few pages. Allowing plans to do so is contrary to the intent of the law and will render the Summary of Benefits and Coverage essentially useless. The Summary Plan Description – which

is typically written in complex, technical language and can be 100 pages long – is a woefully inadequate substitute for the Summary of Benefits and Coverage. Studies have shown that the typical Summary Plan Description is written at a college reading level. Though plans can distribute other material in conjunction with the Summary of Benefits and Coverage, it is imperative that under all circumstances, the Summary of Benefits and Coverage be treated as a stand-alone document. As the NAIC working group noted in its December 17, 2010, transmittal letter to the Department of Health and Human Services, “The summary of benefits and coverage document is intended to be a freestanding document.”<sup>3</sup> Throughout the legislative process leading up to enactment of the Affordable Care Act, we fought to expand consumer protections to every consumer, including those in large employer plans. The Summary of Benefits and Coverage was no exception, and the law is clear that all consumers should have access to this information.

More broadly, the law is clear that insurance companies cannot substitute alternative plan summaries or marketing materials for the Summary of Benefits and Coverage. Allowing insurance companies to do so would severely undermine the ability of consumers to compare plans on an “apples to apples” basis. Consumer testing indicated that a key value of the form was its uniform format which allowed consumers to “line up” the information across two plans.<sup>4</sup> Allowing variation in how the information is disclosed also contravenes the stated goal of the statute. Even plans with similar actuarial value can have very different levels of coverage for various conditions, making the Summary of Benefits and Coverage a necessary tool for consumers.<sup>5</sup> These protections will become even more important in 2014, when individuals will have additional choices of coverage and must be able to easily compare the relative costs and benefits of plans both inside and outside the exchanges.

## ***2. Consumers Should be Able to Easily Access the Summary of Benefits and Coverage – Before they Commit to Enrolling in a Plan.***

The purpose of creating a short, easily understandable Summary of Benefits and Coverage was so that all consumers could easily understand and choose between plans – before they commit their hard-earned money. Consumers should receive accurate, easy-to-understand information when they apply for coverage, when they enroll in coverage, and when coverage is up for renewal.

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<sup>3</sup> NAIC Consumer Information (B) Subgroup, December 17, 2010, letter to Secretary Sebelius, available at [http://www.naic.org/committees\\_b\\_consumer\\_information.htm](http://www.naic.org/committees_b_consumer_information.htm).

<sup>4</sup> [http://prescriptionforchange.org/wordpress/wp-content/uploads/2011/09/CU\\_Consumer\\_Testing\\_Report\\_Dec\\_2010.pdf](http://prescriptionforchange.org/wordpress/wp-content/uploads/2011/09/CU_Consumer_Testing_Report_Dec_2010.pdf)

<sup>5</sup> Coverage When it Counts: How much protection does health insurance offer and how can consumers know? Karen Pollitz, Eliza Bangit, Jennifer Libster, Stephanie Lewis, Nicole Johnston | May 8, 2009. Available at: [http://www.americanprogressaction.org/issues/2009/05/health\\_coverage.html](http://www.americanprogressaction.org/issues/2009/05/health_coverage.html)

Second and more broadly, you should adopt a final rule that makes the Summary of Benefits and Coverage as widely available as possible. The final rule should unequivocally require plans to make the Summary of Benefits and Coverage available on their websites, healthcare.gov, and current and future exchange websites. We also urge you to (1) specify that these websites cannot require passwords or special software to gain access to the Summary of Benefits and Coverage and (2) reject the use of a “coverage calculator” or any other requirement that forces consumers to take special efforts to obtain coverage information. We also urge you to take into account the needs of households without Internet access in developing the final rule. Household Internet use varies widely by income and age: for instance, nearly 40 percent of households with an annual income between \$25,000 and \$34,999 that report using the Internet do not have a computer with Internet access in their home, and over 20 percent of householders 45 to 54 years old report not having Internet access at home, according to the U.S. Census Bureau.<sup>6</sup> Therefore, consumers should be able to specify their preferred method of receiving the Summary of Benefits and Coverage. Consumers are easily deterred from requesting information about health insurance and should have access to basic information without having to jump through hoops to learn about the product they are purchasing.

### ***3. Consumers Should Have Access to Coverage Facts Labels (Coverage Examples), as Required by the Affordable Care Act***

As part of the Summary of Benefits and Coverage form, the Affordable Care Act requires “coverage facts labels” – coverage examples that will allow consumers to obtain an easily comparable snapshot of how a plan would cover certain medical events, such as pregnancy or chronic conditions. These coverage examples promise to be an integral part of helping consumers understand how coverage works. Based on its consumer testing, Consumers Union concluded that the coverage facts label portion of the Summary of Benefits and Coverage “helped [consumers] understand what they were getting for their monthly premium expenditure” and provided a “reliable point of comparison.”<sup>7</sup> Testing by America’s Health Insurance Plans (AHIP) and the Blue Cross and Blue Shield Association (BCBSA) found that the Summary of Benefits and Coverage is “highly valued as a means to understand and compare plans” with “universal support for a simplified, standardized format for summarizing plans across the industry.”<sup>8</sup>

Given the insurance industry’s participation in the development of the Summary of Benefits and Coverage, as well as the Coverage Examples, we are dismayed that the insurance industry has called for the Coverage Examples to be eliminated.<sup>9</sup> We urge you

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<sup>6</sup> U.S. Census Bureau. (2011). *Household Internet usage in and outside of the home by selected characteristics: 2010* from the Statistical Abstract of the United States: 2012, Table 1155. Available at <http://www.census.gov/compendia/statab/2012/tables/12s1155.pdf>.

<sup>7</sup> Consumers Union & Kleimann Communication Group, Inc., *Early Consumer Testing of the Coverage Facts Label: A New Way of Comparing Health Insurance* (Aug. 2011).

<sup>8</sup> JKM Research, *America’s Health Insurance Plans Blue Cross Blue Shield Association Focus Group Summary* (May 2011).

<sup>9</sup> America’s Health Insurance Plans (AHIP) comments on Summary of Benefits and Coverage and Uniform Glossary, available at

to reject this approach, which would clearly contradict the statutory requirements of the ACA. Indeed, despite its claims to the contrary, the insurance industry's own consumer testing found that "the large majority of participants felt the inclusion of examples was helpful", and "participants immediately comprehended the concept that the numbers used in the coverage facts label were examples only and not the actual cost of their own possible treatment."<sup>10</sup> The consumer testing further found that "examples help"<sup>11</sup> – a conclusion that calls for more, not fewer, coverage examples. We therefore submit that you should consider additional coverage examples, selecting conditions that are prevalent in the population and will be informative to sub-populations such as families, persons with disabilities, and young adults.

You should also revisit the proposed uniform glossary for insurance-related and medical terms. As the proposed rule admits, much more can be done beyond the generic definitions that "would not necessarily help consumers understand what terms mean under a given plan or policy, nor would they support meaningful comparison of coverage options."<sup>12</sup> We urge you to take steps to safeguard consumers from any confusion that may arise from specific plans or policies using different terms than the glossary. In addition, we expect that you will, in the future, revise the uniform glossary to reflect new rules about what benefits are covered and how cost-sharing features work once the essential health benefit standard and other ACA cost-sharing standards are implemented.

Finally, we would like to draw the Department's attention to the need to improve the definition of "medically necessary" included in the uniform glossary and request you to include "conditions" in this definition. Currently, the glossary defines "medically necessary" as "[h]ealth care services or supplies needed to prevent, diagnose, or treat an illness, injury, disease or its symptoms and that meets accepted standards of medicine." The exclusion of the term "conditions" renders the definition overly restrictive and could exclude necessary care for physical, mental, and developmental conditions such as spina bifida, cerebral palsy, and autism.<sup>13</sup>

***4. Implementing This Rule in Accordance with the Statutory Deadline is Critical and Consumers Should Not Be Forced to Wait on Access to Important Information About Their Coverage.***

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<http://www.regulations.gov/#!docketDetail;dt=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=250;po=0:D=IRS-2011-0026>.

<sup>10</sup> JKM Research, *America's Health Insurance Plans Blue Cross Blue Shield Association Focus Group Summary* (May 2011).

<sup>11</sup> JKM Research, *America's Health Insurance Plans Blue Cross Blue Shield Association Focus Group Summary* (May 2011).

<sup>12</sup> 72 Fed. Reg. 52442, 52447 (Aug. 22, 2011).

<sup>13</sup> See, e.g. Sara Rosenbaum, "Medical Necessity Definition Threatens Coverage for People with Disabilities," September 16, 2011. Available at [healthaffairs.org/blog/2011/09/16/medical-necessity-definition-threatens-coverage-for-people-with-disabilities/](http://healthaffairs.org/blog/2011/09/16/medical-necessity-definition-threatens-coverage-for-people-with-disabilities/).

*November 22, 2011*

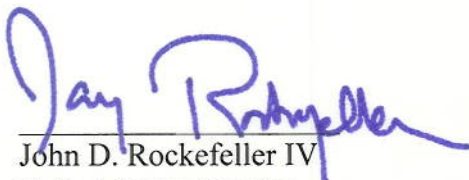
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For too long, consumers and employers have been forced to choose among health coverage options without the comprehensive information needed to make sure that their coverage is appropriate for them. We cannot afford further delays and there is no excuse for a failure to implement the law by its statutory implementation date, which is no later than March 23, 2012. We urge you to promulgate a final rule before the end of this calendar year so that Summary of Benefits and Coverages will be provided to consumers in 2012.

As emphasized above, we are extremely appreciative of the countless hours and effort spent by the NAIC working group to develop this much-needed consumer tool. Though the working group was unable to submit the last portion of its materials until July 29, 2011, the ACA requires you to *consult* with the NAIC – not to rely on them – and these agencies could have taken other steps to issue a proposed rule with the NAIC's work as a supplement. In addition, plans have long been aware of the law's requirements and many were involved in helping draft the Summary of Benefits and Coverage through an open and collaborative process. The proposed rule largely adopted the NAIC's recommendations without change so plans have been fully informed of the requirements throughout the process and already have the information needed to complete the disclosures for consumers. Any delay in implementation of this critical consumer protection is unacceptable, and you should comply with their statutory deadline.

Once again, we thank you and the NAIC working group for their efforts to provide consumers and employers with extensive and meaningful information about their health care coverage. The ACA was the type of transformative legislation we needed to address a crippling lack of health insurance transparency, and we strongly urge you to maintain, strengthen, and enforce the law's Summary of Benefits and Coverage requirements. With these disclosures, we take one more critical step towards delivering on the promise to provide consumers with the information and transparent marketplace they have always deserved.

Sincerely,

  
John D. Rockefeller IV  
United States Senator

  
Rosa L. DeLauro  
Member of Congress